IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1084 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SURYAKANT ALIAS PAPPU ALIAS DARBAR SHYAMKANTIBHAI TIWARI
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1084 of 1997
MR EE SAIYED for Petitioner No. 1
MR KT DAVE,APP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant, in this appeal, has challenged the judgment and order of conviction and sentence dated 27.8.1997 passed in Sessions Case No.177 of 1996 by the learned Addl. City Sessions Judge, Ahmedabad, convicting the appellant for offence punishable under section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and sentencing him to suffer R.I. for ten years and to pay a fine of Rs. 1 lac, in default, to undergo further R.I. for one year. As can be seen from the charge Ex. 2, the appellant was found in possession of 980 grams of brown sugar when he was apprehended by the raiding party at the main gate of Ahmedabad Meter Gauge Railway Station on 20.4.1996.

2. The appellant pleaded not guilty to the charge and claimed to be tried.

3. While denying his involvement in the present case, in his further statement recorded under section 313 of the Code of Criminal Procedure, he has submitted that he is manufacturing plastic bags in the factory situated at Indore. He had gone to Ujjain to purchase plastic granules. In the guest house, he saw police officers who were consuming liquor. From Ujjain, he came to Ahmedabad via Dahod where he was falsely involved in the present case.

4. Learned trial judge, after appreciating the evidence on record including further statement of the appellant, accepted the prosecution case by holding that the prosecution has successfully established the charge levelled against the appellant and has, therefore, passed the order of conviction and sentence.

5. The complainant KT Modi is examined as PW 3 Ex. 26 who, at the relevant time, was serving as Dy. Superintendent of Police in Narcotics Cell. In his evidence,he has stated that on 20.4.1996, he received information from his trusted informant that Suryakant Tiwari (appellant) from Indore was to arrive at Ahmedabad Railway Station in Bhopal Rajkot train with brown sugar in a black colour white dotted cloth bag and was to proceed towards Hanjar Cinema. It is further stated that the said person had put on full sleeves printed shirt and a coffee colour pant. Necessary entry in the register maintained by Narcotic Cell was made at about 6.45 a.m. The information was also conveyed to Deputy Commissioner of Police by written report vide entry no. 20 of 1996 dated 20.4.1996. Two panchas namely Arunkumar Shukla of Meghaninagar and Dineshkumar Mehta, residing at: Bhavaripura, Ahmedabad were called. The staff of

Narcotic Cell consisting of PI Pathan, Shri Jadav, Chauhan, PSI Singh, Sharma, Chudasama, Pande, Head Constable Kapadia, Gosai, Purohit, Constable Chavda and Makwana was conveyed the information. The panchas were also informed and they showed their willingness to act as panchas. Thereafter, search of the person of staff members as well as panchas and the vehicle was carried out and nothing objectionable was found from the said search. The raiding party thereafter left for Ahmedabad Railway Station with necessary material to be used at the time of seizure after making necessary entry in the register secretly maintained by the department. The preliminary panchanama was made at the office of Narcotic Cell at about 7.35 p.m. The panchas signed the said panchanama. The raiding party reached the chowk of Ahmedabad Meter Gauge Railway Station where the vehicles were parked. The members of the raiding party walked down upto the main gate of Railway Station through Musafirkhana. The members of the raiding party took position in the surrounding areas. However, the complainant as well as PI Pathan and panchas occupied the place near Musafirkhana. At about 9.00 a.m., they saw a person from the passengers of the same description given in the information, coming out of the gate. He was apprehended and taken to Musafirkhana where other members of the raiding party also came. On being inquired about the name, the said person gave his name as Suryakant alias Pappu alias Darbar Shamkant Tiwari, residing at: 147, Saver Road, Opposite Pranganga Thana, Indore (M.P.). The complainant gave his introduction as well as introduction of PI Pathan and two panchas. The said person was told that as per their information, he was carrying brown sugar and, therefore, he was required to be searched in presence of panchas. He was further informed that if he was interested to be searched in presence of a gazetted officer or a Magistrate, necessary arrangement can be made. This information was conveyed in writing. On being said "No" by the said person, the said fact was also mentioned in writing under the signature of the concerned person as well as the panchas and complainant. On making search of the black colour white dotted bag of the person, the raiding party found out plastic bags which contained narcotic substance with typical smell. For the purpose of confirming the same, Head Constable Purohit was sent with a yadi to call the FSL Officer as well as photographer in a Government vehicle. From the four plastic bags taken out from the black colour white dotted cloth bag, narcotic substance was found out. On being weighed by the Head Constable Gosai, it was found that the substance weighed 980 grams. On making search of the pocket of the bush-shirt,currency

notes of Rs. 630/-, two electricity bills, driving licence of the person as well as railway ticket from Ujjain to Ahmedabad and a diary containing telephone numbers were removed. All the aforesaid articles were seized under panchanama.

6. At about 11.45 a.m., officers from FSL Shri Dawda and Mansuri as well as Photographer Shri Damor came there and started preliminary inquiry regarding the substance recovered from the appellant. They opined that the same was a narcotic substance. They advised to take samples of the same and to send to FSL. Photographer Damor also took photographs. The aforesaid procedure was completed at about 12.20 p.m. Thereafter, two samples of 100 grams each of the substance recovered were taken and packed in two separate plastic bags; those bags were stapled and kept in a plastic tobacco tin, wrapped by a paper, a slip duly signed by the complainant as well as panchas was affixed, seal was applied describing it as Mark-A. The complainant also did similar work with respect to the second sample of 100 grams taken out from the substance and described it as Mark-B. The remaining portion of the substance together with three plastic bags and cloth bag were kept in a paper box, a paper was wrapped, a slip duly signed by the panchas was tied with a thread and seal was applied as aforesaid and the same was described as Marck- C. The seizure memo Ex. 18 duly signed by panchas, complainant as well as appellant was thereafter issued. The arrest panchanama Ex. 17 was prepared which was also signed by the appellant, panchas as well as appellant. The said panchanama Ex. 16 was drawn at railway station. The raiding party thereafter went to the Office of Narcotic Cell. Writer Constable took down the complaint of the complainant. PI Jadav was asked to register the offence and to take over investigation. Accordingly, PI Jadav took over the investigation and investigated the offence. Muddamal as well as custody of the appellant was handed over to PI Jadav who in turn, sent muddamal in sealed condition to FSL with a forwarding note Ex.23. The complainant identified the muddamal as well as the appellant in the Court.

The complainant has been cross examined at length. He has stated that the informant gave information in the night of 19/20.4.1996 which was taken down by him in a blank paper. Many questions have been put to this witness in cross examination regarding the arrival of Rajkot Bhopal train at Rajkot, about the particular platform, about gauge of the railway station, about location of the platform etc. In our opinion, nothing turns on those details. In view of the fact that

Rajkot Bhopal train had in fact arrived at 8.50 a.m. on the day in question, in view of the evidence of Defence Witness no.1 Ex.38 Bhikhubhai Chhaganlal Naliya, Dy.Superintendent, Ahmedabad Railway Station. In his evidence, he has clearly stated that the arrival time of Indore Bhopal train is of 8.10 a.m. However, on 20.4.1996, the said train arrived at Ahmedabad Railway Station on platform no.3 at 8.50 a.m. In his cross examination, he has clearly stated that Hanjar Cinema is situated towards eastern side from the railway station. He has also stated that if any passenger wants to go towards Hanjar Cinema, he has to pass through eastern gate of meter gauge. The evidence of this witness, in our opinion, will help the prosecution rather than defence inasmuch as it corroborates the say of prosecution witnesses regarding the timings when the appellant was apprehended and the place namely the main gate of meter gauge railway station where the raiding party took position keeping a watch over the movements of the appellant.

7. An unsuccessful attempt is made in the cross examination of the complainant by suggesting that PI Jadav as well as Pathan and other officers had gone to Indore from 15.4.1996 to 19.4.1996 and had brought the appellant with them. The complainant has, in fact, denied the said suggestion. Thus, except making a suggestion, no other material is produced to support the suggestion put to the complainant. From t he evidence of the complainant, it is clear that the complainant has followed the procedure as required under the Act at the time of search and seizure and there is no violation of any mandatory provisions of the Act. Learned Counsel Mr. Saiyed for the appellant has, therefore, rightly not argued regarding the alleged breach of mandatory provisions of the Act.

8. Panch Arunkumar Shukla, PW 1 Ex. 11 has totally supported the prosecution and has proved the panchanama Ex. 16 as well as seizure memo Ex. 18 and intimation of arrest Ex. 17. PI Jadav, PW 5 who was also a member of the raiding party, who later on took over investigation and sent muddamal to FSL through Head Constable Gosai, PW 4 Ex. 31, all these witnesses have totally supported the prosecution. Therefore, with a view to avoid repetition, it is not necessary for us to re-narrate their evidence and to discuss the same in detail.

9. Mr. Saiyed, learned Counsel for the appellant, however, after inviting our attention to the evidence of K.H.Patel, PW 2 Ex.19, Scientific Officer of FSL,

submitted that in the instant case, muddamal samples taken out and seized from the appellant were not sent to FSL and some other samples were sent to the FSL. After inviting our attention to the evidence of the complainant Modi, Investigating Officer Jadav, complaint Ex. 28, panchanama Ex. 16 as well as forwarding note Ex. 23, it was submitted that the complaint Ex. 28 and the panchanama Ex. 16 only state that the seal describing "PI NDPS GS Ahmedabad" was affixed on the sample muddamal while forwarding note Ex. 23 by which the sample muddamal was sent to FSL, seal of "PI,NDPS,GS Crimes, Ahmedabad" was affixed. In view of this discrepancy, it was submitted that the sample muddamal seized from the appellant was not sent to FSL and possibility of sending some other material cannot be ruled out. It is not possible for us to accept the said submission. The complainant and other members of the raiding party are the officers of Narcotic Cell constituted under notification issued by the Government dealing exclusively with the offences under the Act. The said Cell is having only one seal which reads "PI, NDPS, CID Crimes, GS, Ahmedabad". On going through the record, we find that the said seal is applied on the Authority Letter as well as forwarding letter Ex. 23 whereby the sample muddamal was sent by PI Jadav. PI Jadav has signed as PI, Narcotic Squad, CID Crime, Gujarat State. Ahmedabad. Merely because the complaint Ex. 28 and panchanama Ex. 16 do not mention the word "Crime", it cannot be said that the office of the complainant had two different seals and two different samples were sent to FSL. Investigating Officer Jadav, PW 5 Ex.33, in his evidence, has explained the discrepancy by stating that due to inadvertence, the words "CID Crime" were not stated even though they are in the seal. He has also denied the suggestion that muddamal sample stated in the description Ex. 23 had not reached the FSL. We, therefore, reject the first contention of Mr. Saiyed.

10. It was then submitted that in the forwarding letter Ex. 23, since no opinion regarding sample muddamal being of narcotic substance is called for and that FSL has not positively opined that the sample muddamal was brown sugar, the appellant cannot be held guilty for possessing narcotic substance. Our attention is invited to the evidence of PW 2 Ex. 19 Kanubhai Patel, Scientific Officer of FSL, Ahmedabad. This witness, after perusing forwarding letter Ex. 23 has stated that a specific opinion regarding the sample muddamal being brown sugar was not called for and, therefore, he had not opined that it was brown sugar. He has further stated that sample muddamal which was

described in column no.1 of the forwarding letter was not sent and the sample muddamal was sent in tin box by two seals. By making a mountain out of the aforesaid discrepancy in the evidence of this witness, it was submitted that no conviction can be based relying solely on the evidence of raiding party. We have closely examined the evidence of this witness. This witness, in his examination-in-chief, has clearly stated that he received the parcel containing sample bearing seal no. "PI NDPS CID Crimes GS Ahmedabad". He also found the slips signed by panch Dinesh Harish Mehta. The other two signatures were illegible. However, below one of the signatures, designation of officer was described as "Deputy Police Officer, State Narcotic Cell, Ahmedabad." The description of sample given by him is identical to the description given in the panchanama. After examining the sample article Mark A, he found presence of morphene, dialectal morphene, narcotene, popuran thebane, acetyl codeine, mono acetyl morphene, codeine. The Authority Letter sent along with forwarding letter Ex. 23 also authorises the FSL to inquire into muddamal sent to it. The forwarding letter Ex. 23 also described the sample article as brown sugar. Thus, the PI and Anti Narcotic Squad who sent the sample article brown sugar to FSL was only for the purpose of analysis and to submit the report. The FSL, in compliance with the said request, in fact opined by submitting report Ex. 22 that the sample article possessed narcotic substance. Reading the report of the FSL, we are clearly of the view that he had given answer in the cross examination not consistent with his own report. He answered the questions put to him out of sheer confusion. Merely because he had not opined that the sample article was brown sugar which is a popular name of narcotic substance, that will not lead to hold that it was a substance other than narcotic substance especially when as per the report of FSL, it is clearly opined that the sample muddamal was narcotic substance.

11. The finding of two seals on the sample article as noticed by this witness is also inconsistent with receipt Ex. 52 issued by forwarding letter Ex. 23 where we find only one seal. The fact of presence of two seals having been noticed by this witness and not mentioning the same earlier will on the contrary go to show that this witness is totally confused and has, therefore, not given the correct answer. Even though he has admitted that he had destroyed both the seals, however, even that assertion is not correct since we ourselves have noticed after examining the original record that there is only one seal which is in tact. The appellant is not entitled to take advantage of the alleged discrepancy in the evidence of

PW 2 Shri Patel, Scientific Officer of FSL. We, therefore, see no merit in this submission and reject the same.

12. No other contention is raised on behalf of the appellant. In view of this, we see no merit in this appeal. In our opinion, the learned trial judge was justified in passing the order of conviction and sentence against the appellant. Since we are in total agreement with the reasonings and the ultimate conclusion reached by the learned trial judge, we see no reason to interfere with the said judgment.

13. There being no substance in this appeal, it is dismissed.

(Kshitij R.Vyas,J.)

(Ravi R.Tripathi,J.)

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